Remarks

This amendment is submitted in response to the Office Action mailed 26 March 2007, in connection with the above-identified application (hereinafter, the "Office Action"). The Office Action provided a one-month shortened statutory period in which to respond, ending on 26 April 2007. Submitted herewith is a Petition for a Four-Month Extension of Time extending the due date to 26 August 2007. Accordingly, this amendment is timely submitted.

Applicants also herein request a three month extension for this response as allowed under 37 C.F.R. § 1.136(a). The Examiner is authorized to charge Deposit Account No. 19-0134 in the name of Novartis Corporation for the fee required under 37 C.F.R. § 1.17(a) and other fees that maybe deemed owed or credit any overpayment.

Applicant respectfully requests reconsideration of the application for patent.

Applicant does not acquiesce to the correctness of the rejections or objections and reserve the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further Applicants reserve the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application.

"A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. The expression special technical features is defined as meaning those technical features that define the contribution which each claimed invention, considered as a whole, makes over the prior art. For example, a corresponding technical feature is exemplified by a key defined by certain claimed structural characteristics which correspond to the claimed features of a lock to be used with the claimed key." MPEP 1893.03(d). There was no Lack of Unity found in the International Stage with claims that have since been minimally amended to better comply with U.S. Practice.

More specifically, the present application is similar to Example 1 of Chapter 10 of the International Search and Preliminary Examination Guidelines. Like Claim 1 of the example, claims 19-21, 29, 38, 41, 44, 47 relate to a method of making of the composition of claims 22-28, 30-37, 39-40, 42-43, 45-46 (corresponding to claim 2 of the example). Claims 48, 50-51 of the present application relate to a method of using the specific technical feature of one or more viscous soluble fiber(s) and one or more viscosity-lowering protein(s) (corresponding to claim 3 of the example).

MPEP 803 states that "[i]f the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions. For purposes of the initial requirement, a serious burden on the examiner may be prima facie shown by appropriate explanation of separate classification, or separate status in the art, or a different field of search as defined in MPEP § 808.02. Further, MPEP 803 provides in the guidelines that

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"Examiners must provide reasons and/or examples to support conclusions." In the present application, applicant respectfully submits that one or more viscous soluble fiber(s) and one or more viscosity-lowering protein(s) would not create a serious burden on the Examiner. The Applicant believes that the Examiner's search could be made of both the composition as claimed in claims 22-28, 30-37, 39-40, 42-43, 45-46 and the use thereof, as claimed in claims 48, 50-51, and a method of making of the composition of claims 19-21, 29, 38, 41, 44, 47, without undue burden for the Examiner. The composition and its use is intimately related and that a search of references for the elements of claims 22-28, 30-37, 39-40, 42-43, 45-46 could include a simultaneous search of the references concerning the intended use of the composition of claims 48, 50-51 to treat the disease states of claims 48, 50-51. The Applicants respectfully request that the Examiner enter the traversal of the Restriction Requirement.

For the reasons stated above, applicant believes that the claims of the present invention exhibit unity of invention, and respectfully request that the finding of lack of unity be withdrawn.

§ 1.141 (a) provides "more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims in one national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§ 1.75) or otherwise include all the limitations of the generic claim." In the present invention, all mentioned species of fiber are dependent from the generic claims and all mentioned species of protein are dependent from the generic claims.

Although not specifically cited by the Examiner, Applicant would like to also note § 1.146 Election of species which provides for the examiner may require the applicant in the reply to that action to elect a species of his or her invention to which his or her claim will be restricted if no claim to the genus is found to be allowable. However, if such application contains claims directed to more than a reasonable number of species, the examiner may require restriction of the claims to not more than a reasonable number of species before taking further action in the application. Applicant does not believe that metabolic syndromes, diabetes and lowering blood cholesterol is more than a reasonable number of species.

Applicant provisionally elects guar gum, collagen, and metabolic syndromes

Applicant would like to thank the Examiner for interpreting "5 hydrosylates" as a typographical error of the original "hydrosylates". Applicant confirms this is a typographical error and has herewith amended claim 19 accordingly.

IN THE CLAIMS

Accordingly, claims 19-21, 29, 38, 41, 44, and 47-51 are provisionally withdrawn from consideration as being directed to a non-elected invention, pending review of the traverse above.

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If a telephone interview would be of assistance in advancing the prosecution of the application, Applicants' undersigned attorney invites the Examiner to telephone him at the number provided below.

Respectfully submitted,

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